TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 324

THE UNITED STATES OF AMERICA, PETITIONER

vs.

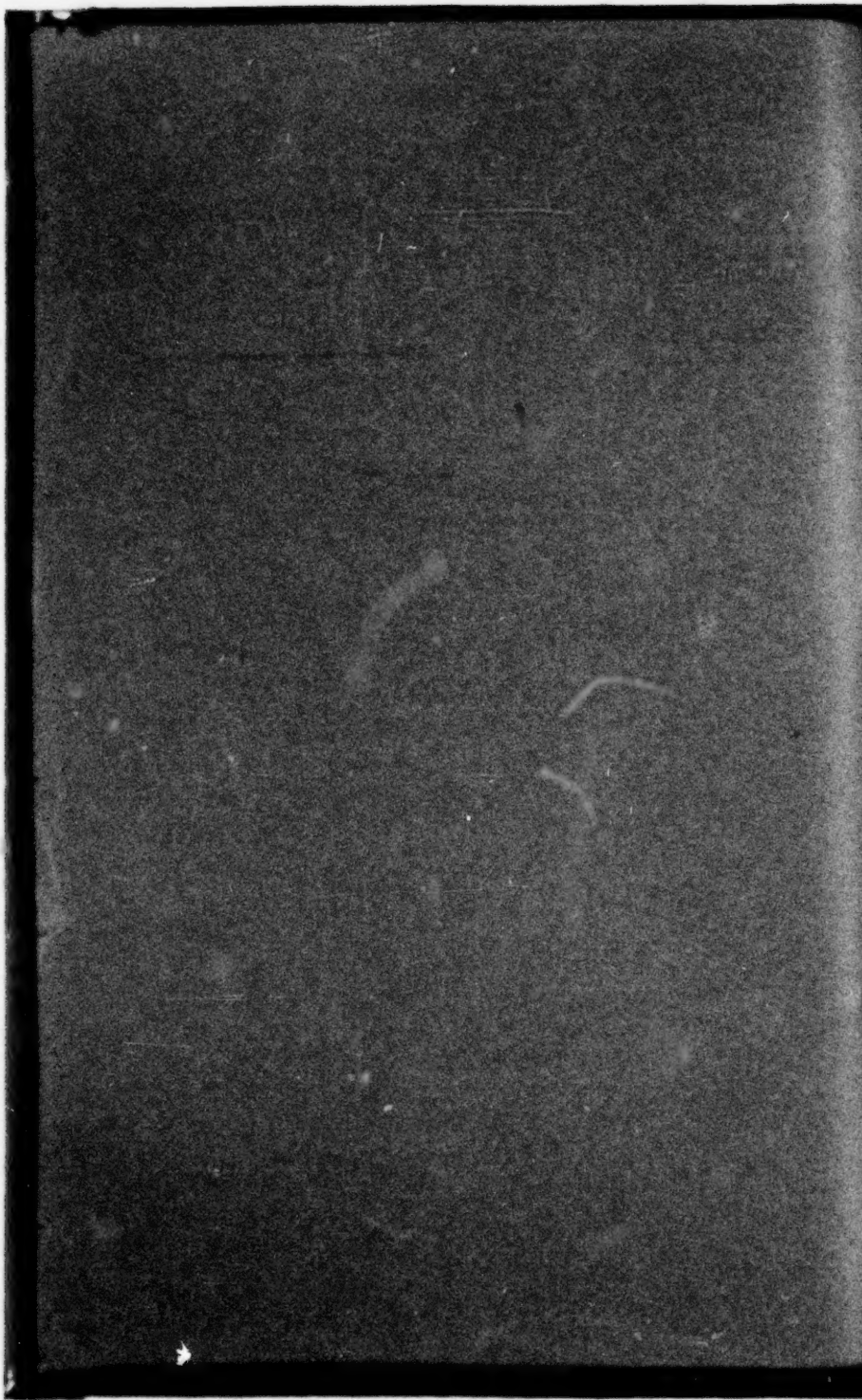
FLORENCE E. WILLIAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 7, 1926

CERTIORARI GRANTED MAY 24, 1926

(32243)



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922

No. 104

THE UNITED STATES OF AMERICA, PETITIONER

vs.

FLORENCE E. WILLIAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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1 In United States Circuit Court of Appeals for the Third Circuit

No. 3660

FLORENCE E. WILLIAMS, PLAINTIFF IN ERROR

vs.

UNITED STATES OF AMERICA

Writ of error from the United States Circuit Court of Appeals for the Third Circuit to the District Court of the United States for the Western District of Pennsylvania at No. 3469, Law

In United States District Court

Among the files, records, and proceedings of the District Court of the United States for the Western District of Pennsylvania, at No. 3469, Law, may be found the following:

Docket entries

Apr. 23, 1926: Plaintiff's petition of claim against United States filed.

Apr. 23, 1926: Affidavit of service filed.

2 July 22, 1926: Affidavit of defense raising questions of law, filed and entered.

July 27, 1926: Amendments to plaintiff's petition and stipulation of defendant consenting thereto filed.

Mar. 8, 1927: Opinion and decree filed and entered sustaining the demurrer of the United States and dismissing the plaintiff's petition; exceptions noted to plaintiff.

June 6, 1927: Notice of petition for writ of error filed.

June 6, 1927: Assignments of error filed.

June 6, 1927: Petition for writ of error and order allowing same filed.

June 11, 1927: Citation issued.

June 11, 1927: Writ of error awarded.

June 14, 1927: Citation returned showing service thereon and mailed, with writ of error, to clerk of U. S. Circuit Court.

Certificate from the record this 23rd day of June, 1927.

[SEAL.] J. WOOD CLARK, *Clerk*.

3 In United States District Court

Petition

Filed April 23, 1926

To the honorable the judges of said court:

The petition of Florence E. Williams, the plaintiff herein, respectfully represents:

That she is a citizen of the United States, resident and domiciled in Pittsburgh, in said western district of Pennsylvania.

That plaintiff claims from the defendant a certain sum of money, which, for reasons herein stated, she is not able to liquidate, but which does not exceed fifteen hundred ($1,500.00) dollars, with interest from August 13th, 1925, and bases her claim upon a cause of action, whereof the following is a statement:

First. That the defendant, the United States of America, by and through the Director of the United States Veterans' Bureau (hereinafter designated the director), issued to William C. Williams (hereinafter designated the veteran) upon his application and pursuant to the provisions of the World War adjusted compensation act of Congress of May 19th, 1924, c. 157 (43 Stat. 121), an adjusted service certificate, dated January 1st, 1925, wherein and whereby, as plaintiff has been informed, believes, expects to prove, and therefore avers, the defendant, acting through and by the Director, certified that pursuant to the said act of Congress and in conformity with the laws of the United States, the amount therein named shall become due and payable on the first day of January, 1945, to the veteran, or,
upon the death of the veteran prior to the due date above
4 named, the amount therein stated shall become due and payable to the beneficiary named by the veteran.

The plaintiff avers that the said adjusted service certificate is in the possession of the director; that she has made demand upon him for it or for a true and correct copy thereof; but that he has hitherto failed, neglected, and refused to comply therewith, for which reason plaintiff is unable to make profert of said adjusted service certificate.

Second. That the plaintiff was the wife of the veteran, and is the beneficiary named in the said adjusted service certificate.

Third. That the veteran served in the United States Army during the period of the World War from date of enlistment, some time in 1918, until date of discharge, which was prior to July 1st, 1919. During that period he served some time overseas.

That, by reason of said service, the veteran became entitled to the benefits of the said act of Congress; and he, pursuant thereto, as plaintiff has been informed, believes, expects to prove, and therefore avers, made application some time in 1924 for said benefits, and said application was filed with the Secretary of War, upon receipt of which application, the Secretary of War, pursuant to the provisions of sections 303 and 305 of said act, transmitted it to the director, together with a certificate setting forth (1) that applicant was a veteran; (2) his name and address; (3) the date and place of his birth; and (4) the amount of his adjusted service credit, together
with the facts of records in his department upon which such
5 conclusions were based, and thereafter, the director issued to the veteran the said adjusted service certificate.

Plaintiff has frequently requested and demanded from the director a copy of said certificate, but he has hitherto failed, neglected, and refused to comply therewith, for which reason the

plaintiff is unable to herein aver the exact dates of the veteran's enlistment and discharge, the number of days of service overseas, the number of days of service at home, and, therefore, the amount of the adjusted service credit to which the veteran was entitled.

Fourth. That pursuant to the said act of Congress (section 201) the veteran was entitled to adjusted service credit computed by allowing for each day of active service in excess of sixty (60) days in the military or naval forces of the United States, after April 5th, 1917, and before July 1st, 1919, $1.25 for each day of overseas service and $1.00 for each day of home service.

Fifth. That pursuant to said act of Congress (section 505) the adjusted service certificate should have been of face value equal to the amount in dollars of twenty (20) year endowment insurance that the amount of the said veteran's adjusted service credit, increased by 25%, would purchase at his age on his birthday nearest the date of the certificate, if applied as a net single premium, calculated in accordance with accepted actuarial principles and based upon the American Experience Table of Mortality, and interest at 4% per annum, compounded annually.

Sixth. That the veteran was thirty-one (31) years old on his birthday nearest to January 1st, 1925.

6 Seventh. That the veteran died August 13th, 1925, and thereupon there became immediately due and payable by defendant to the plaintiff, pursuant to said act of Congress (section 501), the amount calculated in the method prescribed by said act of Congress, which amount should have been the face value of the adjusted service certificate issued to the veteran.

Eighth. That plaintiff has been informed by the director that the amount of the face value of the adjusted service certificate which was issued to the veteran is $867.00; but plaintiff is informed, believes, expects to prove, and therefore avers either that the veteran's service entitled him to a larger adjusted service credit than was allowed or that the amount of the face value of the adjusted service certificate has not been properly calculated in accordance with the said act of Congress.

Plaintiff therefore avers and claims that the face value of the adjusted service certificate should be not less than fifteen hundred ($1500.00) dollars, which amount she claims from the defendant, with interest from August 13th, 1925, the date of veteran's death.

Ninth. That plaintiff has filed proof of claim and has complied with all requirements of law and of the director concerning the making and filing of said proof of claim.

Tenth. That plaintiff has frequently demanded payment of the true and correct amount due her as the beneficiary under the said adjusted service certificate; but defendant has hitherto failed, neglected, and refused to do so; hence this suit.

7 Eleventh. That defendant be required to attach to and make part of the affidavit of defense or answer hereto the following:

(a) True copy of the adjusted service certificate.

(b) True copy of the veterans' record, as required by section 305 of the said act of Congress.

(c) True copy of application and certificate, as required by section 303 of the said act of Congress; and

(d) All information relating to the veteran, his record, and service that may be found in the Department of War or in the United States Veterans' Bureau in order that plaintiff and the court may calculate the true amount of said adjusted service certificate to recover which this suit is brought.

Wherefore plaintiff prays for judgment in her favor against defendant for the amount which may be found to be truly and justly due her.

And she will ever pray, etc.

FLORENCE E. WILLIAMS.

WILLIAM KAUFMAN, Esq.,
206-7 Standard Life Bldg., Pittsburgh, Pa.,
Attorney for Plaintiff.

PITTSBURGH, PA., *April 23, 1926.*

8 [*Duly sworn to; jurat omitted in printing.*]

In United States District Court

Affidavit of service

Filed April 23, 1926

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

William Kaufman, being duly sworn according to law, deposes and says that he, on behalf of plaintiff, on April 23, 1926, served an attested copy of the petition filed in this case upon the district attorney of this district, and that on April 23, 1926, he mailed an attested copy of the petition by registered letter to the Attorney General of the United States.

WM. KAUFMAN.

9 Sworn to and subscribed before me this 23rd day of April, 1926.

[SEAL.] B. D. GAMBLE, *Dep. Clerk.*

In United States District Court

Affidavit of defense raising question of law

Filed July 22, 1926

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

And now comes the defendant, by John D. Meyer, United States Attorney for the Western District of Pennsylvania, who, being duly

sworn, deposes and says that he has a complete defense in the above entitled suit of which the following is a statement:

First. The petitioner or claimant seeks to recover what in reality amounts to a pension and has instituted the case in the District Court pursuant to section 24, paragraph 20, of the Judicial Code, which gives the District Court jurisdiction concurrent with the Court of Claims in all suits against the United States not exceeding $10,000.00 in amount. But under the said section under which the said claimant has brought suit no jurisdiction has been granted the District Courts to hear and determine claims for pensions.

Second. The said petition does not state a cause of action against this defendant within the jurisdiction of this court.

Defendant, therefore, respectfully requests the court to hear
10 and dispose of the question of law so raised, and to dismiss the above entitled case at the cost of the plaintiff.

JOHN D. MEYER.

Sworn and subscribed before me this 22nd day of July, 1926.

[SEAL.] GERTRUDE HORTON BERGER,
Dep. Clerk U. S. Dist. Ct.

In United States District Court

Amendments to petition

Filed July 27, 1926

And now, July 26, 1926, plaintiff amends petition of claim as follows:

The clause of paragraph on page one (1), immediately prior to paragraph designated "First," to read as follows:

"That plaintiff claims from the defendant the sum of eight hundred and sixty-seven ($867.00) dollars, with interest from August 13th, 1925, and bases her claim upon a cause of action whereof the following is a statement:"

Amend first paragraph by adding thereto the following:

"That after this suit was brought and this petition filed the director prepared and sent to the United States District Attorney of this district for use in this case a photostatic copy of the adjusted service certificate, which copy plaintiff accepts as true and correct and by reference makes it part hereof."

11 Amend third paragraph by adding thereto the following:

"That after this suit was brought and this petition filed the director sent to plaintiff a photostatic copy of the certificate of the Secretary of War to the director, as required by the said act of Congress, showing, inter alia, the record of the veteran; the number of days of home service and number of days of overseas service, to wit, seventy-five (75) days home service between June 12th, 1918, and August 25th, 1918; two hundred and fifty-four (254) days over-

seas service between August 26th, 1918, and May 6th, 1919; and twelve (12) days home service between May 7th, 1919, and May 18th, 1919; that the money value of the computed service (that is, the adjusted service credit) of the veteran was $344.50; that veteran had been honorably discharged; and that, according to the computation of the Secretary of War, the amount of the adjusted service certificate to which the veteran was entitled was $867.10, which photostatic copy plaintiff accepts as true and correct, and by reference hereby makes it a part hereof."

Amend eighth paragraph by eliminating so much thereof as is inconsistent with the above stated amendments.

WM. KAUFMAN,
906-7 Standard Life Building, Pittsburgh, Pa.,
Attorney for Plaintiff.

And now, July 26, 1926, Ass't U. S. Attorney consents to the making of the foregoing amendments, and stipulates that same may
12 be filed and petition amended accordingly, without verification by plaintiff and without order of court.

W. J. AIKEN,
Ass't U. S. Attorney.

In United States District Court

Adjusted service certificate

The United States of America

It is hereby certified that pursuant to the World War adjusted compensation act and in conformity with the laws of the United States the amount herein named, eight hundred sixty-seven dollars ($867.00), less any indebtedness including interest lawfully incurred and due hereon, shall become due and payable on the first day of January, 1945, to William C. Williams, A3081035, whose address is 541 Wildwood Street, Verona, Pa., herein referred to as the veteran, or, upon the death of the veteran prior to the due date above named, the amount hereinabove stated shall become due and payable to the beneficiary named by the veteran, except that if such beneficiary dies before the veteran and no new beneficiary is named, or if the beneficiary in the first instance has not been named, then the amount as stated will become due and payable to the estate of the veteran.

This certificate is issued by the Director of the United States Veterans' Bureau, hereinafter referred to as the director, in compliance with section 501 of Title V of the World War adjusted compensation act and is subject to all the provisions of that act and regulations prescribed thereunder from time to time by the director.

13 The amount due under this certificate will be paid upon presentation of the certificate with form "Demand for payment" appearing on the reverse side hereof, duly executed and certi-

fied and accompanied by such proof of identity and right to receive payment as may be prescribed, to the director, in the city of Washington, District of Columbia, or at such agency or agencies as the director may designate, and in accordance with such rules and regulations as the director may prescribe. Execution of form "Demand for payment" is not a requirement for payment to an incorporated bank or trust company on account of loans, as authorized in section 502 of Title V of the World War adjusted compensation act.

The veteran may, with the approval of the director, change the beneficiary of this certificate. Change of beneficiary is subject to such regulations as the director may prescribe.

Neither this certificate nor any right conferred herein, or incidental thereto, shall be negotiable, or assignable, or serve as security for any loan except as provided in section 502 of Title V of the World War adjusted compensation act here set forth:

SEC. 502. (a) A loan may be made to a veteran upon his adjusted service certificate only in accordance with the provision of this section.

(b) Any national bank, or any bank or trust company incorporated under the laws of any State, Territory, possession, or the District of Columbia (hereinafter in this section called "bank") is authorized, after the expiration of two years after the date of the certifi-
14 cate, to loan to any veteran upon his promissory note secured by his adjusted service certificate (with or without the consent of the beneficiary thereof) any amount not in excess of the loan basis (as defined in subdivision (g) of this section) of the certificate. The rate of interest charged upon the loan by the bank shall not exceed, by more than 2 per centum per annum, the rate charged at the date of the loan for the discount of 90-day commercial paper under section 13 of the Federal reserve act by the Federal reserve bank for the Federal reserve district in which the bank is located. Any bank holding a note for a loan under this section secured by a certificate (whether the bank originally making the loan or a bank to which the note and certificate have been transferred) may sell the note to, or discount or rediscount it with, any bank authorized to make a loan to a veteran under this section and transfer the certificate to such bank. Upon the indorsement of any bank, which shall be deemed a waiver of demand, notice, and protest by such bank as to its own indorsement exclusively, and subject to regulations to be prescribed by the Federal Reserve Board, any such note secured by a certificate and held by a bank shall be eligible for discount or rediscount by the Federal reserve bank for the Federal reserve district in which the bank is located. Such note shall be eligible for discount or rediscount whether or not the bank offering the note for discount or rediscount is a member of the Federal Reserve System and whether or not it acquired the note in the first instance from the veteran or acquired it by transfer upon the indorsement of any other bank. Such note shall not be eligible for discount or rediscount unless it has at the

time of discount or rediscount a maturity not in excess of nine
15 months exclusive of days of grace. The rate of interest charged by the Federal reserve bank shall be the same as that charged by it for the discount or rediscount of 90-day notes drawn for commercial purposes. The Federal Reserve Board is authorized to permit, or on the affirmative vote of at least five members of the Federal Reserve Board to require, a Federal reserve bank to rediscount for any other Federal reserve bank notes secured by a certificate. The rate of interest for such rediscount shall be fixed by the Federal Reserve Board. In case the note is sold, discounted, or rediscounted the bank making the transfer shall promptly notify the veteran by mail at his last known post-office address.

(c) If the veteran does not pay the principal and interest of the loan upon its maturity, the bank holding the note and certificate may, at any time after maturity of the loan but not before the expiration of six months after the loan was made, present them to the director. The director may, in his discretion, accept the certificate and note, cancel the note (but not the certificate), and pay the bank, in full satisfaction of its claim, the amount of the unpaid principal due it and the unpaid interest accrued, at the rate fixed in the note, up to the date of the check issued to the bank. The director shall restore to the veteran, at any time prior to its maturity, any certificate so accepted upon receipt from him of an amount equal to the sum of (1) the amount paid by the United States to the bank in cancellation of his note, plus (2) interest on such amount from the time of such payment to the date of such receipt, at 6 per centum per annum, compounded annually.

(d) If the veteran fails to redeem his certificate from the
16 director before its maturity, or before the death of the veteran, the director shall deduct from the face value of the certificate (as determined in section 501) an amount equal to the sum of (1) the amount paid by the United States to the bank on account of the note of the veteran, plus (2) interest on such amount from the time of such payment to the date of maturity of the certificate or of the death of the veteran, at the rate of 6 per centum per annum, compounded annually, and shall pay the remainder in accordance with the provisions of section 501.

(e) If the veteran dies before the maturity of the loan, the amount of the unpaid principal and the unpaid interest accrued up to the date of his death shall be immediately due and payable. In such case, or if the veteran dies on the day the loan matures or within six months thereafter, the bank holding the note and certificate shall, upon notice of the death, present them to the director, who shall thereupon cancel the note (but not the certificate) and pay to the bank, in full satisfaction of its claim, the amount of the unpaid principal and unpaid interest, at the rate fixed in the note, accrued up to the date of the check issued to the bank; except that if, prior to the payment, the bank is notified of the death by the director and fails to present the certificate and note to the director within fifteen

days after the notice, such interest shall be only up to the fifteenth day after such notice. The director shall deduct the amount so paid from the face value (as determined under section 501) of the certificate and pay the remainder in accordance with the provisions of section 501.

(f) If the veteran has not died before the maturity of
17 the certificate, and has failed to pay his note to the bank or the Federal reserve bank holding the note and certificate, such bank shall, at the maturity of the certificate, present the note and certificate to the director, who shall thereupon cancel the note (but not the certificate) and pay to the bank, in full satisfaction of its claim, the amount of the unpaid principal and unpaid interest, at the rate fixed in the note, accrued up to the date of the maturity of the certificate. The director shall deduct the amount so paid from the face value (as determined in section 501) of the certificate and pay the remainder in accordance with the provisions of section 501.

(g) The loan basis of any certificate at any time shall, for the purpose of this section, be an amount which is not in excess of 90 per centum of the reserve value of the certificate on the last day of the current certificate year. The reserve value of a certificate on the last day of any certificate year shall be the full reserve required on such certificate, based on an annual level net premium for twenty years and calculated in accordance with the American Experience Table of Mortality and interest at 4 per centum per annum, compounded annually.

(h) No payment upon any note shall be made under this section by the director to any bank, unless the note when presented to him is accompanied by an affidavit made by an officer of the bank which made the loan, before a notary public or other officer designated for the purpose by regulation of the director, and stating that such bank has not charged or collected, or attempted to charge or collect, directly or indirectly, any fee or other compensation (except interest as
18 authorized by this section) in respect of any loan made under this section by the bank to a veteran. Any bank which, or director, officer, or employee thereof who, does so charge, collect, or attempt to charge or collect any such fee or compensation shall be liable to the veteran for a penalty of $100, to be recovered in a civil suit brought by the veteran. The director shall upon request of any bank or veteran furnish a blank form for such affidavit.

Any negotiation, assignment, or loan made in violation of any provision of the foregoing section of the law shall be void.

The loan value of this certificate increases yearly after the second year. Under the loan table shown below one dollar is taken as a basis and the loan value thereof is shown opposite the yearly periods. To find the loan value of this certificate at any time multiply the face value by the loan value on one dollar shown opposite the number of years corresponding to the number of years that have elapsed from the effective date of the certificate.

TABLE OF LOAN VALUES ON THIS CERTIFICATE

32 years	Loan basis per $1.00	Years	Loan basis per $1.00
2	.08793	11	.43550
3	.11959	12	.48109
4	.15352	13	.53584
5	.18861	14	.58919
6	.22532	15	.64522
7	.26375	16	.70409
8	.30398	17	.76592
9	.34612	18	.83123
10	.39025	19	.89999

19 Neither this certificate nor any sum payable to a veteran, or to his estate, or to any beneficiary under this certificate, nor proceeds of any loan made on this certificate, shall be subject to attachment, levy, or seizure under any legal or equitable process, or to National or State taxation.

All rights under this certificate are effective from the first day of January, 1925.

Age 32.

Given at the central office of the United States Veterans' Bureau, in the city of Washington, District of Columbia, this first day of January, one thousand nine hundred and twenty-five.

No. 2634866.

[SEAL.]

FRANK T. HINES,
Director, United States Veterans' Bureau.

O. W. CLARK,
Chief, Adjusted Compensation Division.

20 In the United States District Court

Copy of veteran's record in U. S. Veterans' Bureau

A. APPLICATION

Item 10 will not be filled out in case of dependent making application

Application number 3081035

10. In accordance with the statements made by me in this application, I hereby apply for the benefits to which I may be entitled under the provisions of the World War adjusted compensation act, and designate the following-named person as my beneficiary under the provisions of said act:

Name (Mr., Mrs., or Miss), (first) Florence, (middle) Ethel, (last) Williams. (Relationship of beneficiary) wife.

Address of beneficiary (house number), 541, (street) Wildwood St., (city) Verona, (county) Allegheny, (State) Pa.

Signature of veterans, (first) William, (middle) Charles, (last) Williams.

11. Fingerprint of right hand of veteran (plain imprint of four fingers taken at the same time).

12. (See instructions for this item.)

(a) (Name of veteran—last) Williams, (first) William, (middle) C.

(b) (Serial number of veteran) 3115963.

(c) Address of veteran) 541 Wildwood St., Verona, Pa.

21 (d) (Date of birth of veteran) Oct. 20, 1892, (place of birth of veteran) Kelton, Penna.

(e) (Rank and organization at date of discharge) Private, Co. D, 538 Engineers.

[Extract from Title VII, World War adjusted compensation act]

Penalty for making false or fraudulent statement in application

SEC. 702. Whoever knowingly makes any false or fraudulent statement of a material fact in any application, certificate, or document under the provisions of Titles III, IV, V, or VI, or of any regulation made under any such title, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned for not more than five years, or both.

c3—8781.

160 A. G. O.
Jan. 12, 1925
Adj. Comp. Br.

22 B. RECORD

[Original]

Williams (Last name) William (First name) C. (Middle name) Application No. 3081035

Pvt. (Rank) Co. D, 538 Engrs. (Organization) 3115963 (Serial No.)

The service or other official records of the above-named veteran that are now on file in this department show the following facts:

Service after April 5, 1917, and before July 1, 1919:

Home	Jun. 12, 1918, to Aug. 25, 1918 = 75 days						
Exception ( )	Sec. 202, 191	to	191	=	days		
Exception ( )	Sec. 202, 191	to	191	=	days		
Other "	191	to	191	=	days	(15 days @ $1.00 = $15.00)	
Overseas	Aug. 26, 1918, to May 6, 1919 = 254 days						
Exception ( )	Sec. 202, 191	to	191	=	days		
23 Exception ( )	Sec. 202, 191	to	191	=	days—60		
Other "	191	to	191	=	days	(254 days @ $1.25 = $317.50)	
Home	May 7, 1919, to May 18, 1919 = 12 days						
Exception ( )	Sec. 202, 191	to	191	=	days		
Exception ( )	Sec. 202, 191	to	191	=	days		
Other "	191	to	191	=	days	(12 days @ $1.00 = $12.00)	

( )ped RK Examined MCM Money value of computed service of veteran, $344.50

3 5 Computed fo-w Examined CWC.

There are no exceptions under World War adjusted compensation act, in the case of this veteran, other than those set forth in this certificate.

Remarks.....

24 C. CERTIFICATE

11.32 Auth for face Age 32.
855.78 Value of Cert. $867 By NYIrlinent.
867.10* Cert. No. 2034866 Issued 1-1-25.

Beneficiary Williams, Mrs. Florence, Ethel, Wife
(Last name) (First name) (Middle name) (Relationship)

Address 541 Wildwood St. Verona Pa.
(House number) (Street) (City) (County) (State)

I certify that the person first named on the face of the certificate is the applicant and is a veteran; that he was discharged under honorable conditions; that he was born on Oct. 20, 1892, at Kelton, Pa.; that his address is 541 Wildwood St., Verona, Pa.; that the date of his application is Dec. 31, 1924; that the amount of adjusted service credit due veteran is $344.50; and that the facts hereinbefore stated are the facts of record upon which the conclusions hereinbefore reached are based.

JOHN W. WEEKS,
Secretary of War.

Stamped:
Official:
Robert C. Davis,
Major General,
The Adjutant General.
Stamped:
War Dept.
Feb. 4, 1925.
Washington, D. C.
25 Stamped
Received
Feb. 6, 1925
Adj. Comp. Div.

In United States District Court

Opinion

Filed March 8, 1927

GIBSON, District Judge.

The plaintiff has sought to avail herself of that part of the jurisdiction of this court concurrent with that of the Court of Claims. Under the provisions of the World War adjusted compensation act of May 19, 1924 (43 Stat. 121), an adjusted service certificate was issued to William C. Williams. The beneficiary under that certificate was the plaintiff. William C. Williams died August 5, 1925, and thereafter the plaintiff made due demand upon the Director of

the United States Veterans' Bureau for payment of the amount contemplated in said adjusted service certificate. The director has refused to make such payment, and plaintiff has filed her petition for the purpose of recovering the amount provided by the certificate.

The United States attorney, on behalf of the United States, has demurred to the petition, the basis of his demurrer being the allegation that the act of Congress which conferred upon this court limited concurrent jurisdiction with the Court of Claims expressly denied jurisdiction in regard to pension claims.

26 Upon argument upon the demurrer plaintiff contended that the claim set forth in her petition was not the claim for a pension such as was contemplated in the act of Congress conferring jurisdiction upon this court. It was forcibly pointed out that while the ordinary pension act provides for a regular payment at stated intervals to the pensioner and ceases with the death of the pensioner, the act under which this certificate issued provides for the payment of a definite sum at the end of twenty years; or, in case of death of the veteran prior to the expiration of that time, the amount is to be paid to the beneficiary, or, for lack of a beneficiary, to the estate of the veteran. We have given this contention careful consideration, but find ourselves unable to agree to its soundness. True, the act does not describe the amount awarded as a pension, but it has thrown around it all the ordinary provisions relating to a pension and the amount awarded is a gratuity plainly in the nature of a pension. When the act which conferred jurisdiction upon the Court of Claims is compared with that which confers jurisdiction upon this court, it seems quite plain that Congress intended to allow suit to be brought against it upon practically all claims except upon gratuities awarded by it, and that such gratuities were to be distributed in accordance with the regulations of the proper department of the United States and the rulings of its proper officers. Each of these acts of Congress conferring jurisdiction, it will be noted, excepts jurisdiction in the matter of pensions. In making the foregoing statement we do not wish to be understood as saying that any claimant under the adjusted compensation act or any other pension act is at the mercy of any arbitrary or capricious ruling of a departmental officer. In such case, in our judgment, a plain remedy exists.

27 It is urged on behalf of the petitioner that whatever might have been the nature of the original claim of William C. Williams, when the adjusted service certificate was actually issued it became, in itself, an obligation of the United States, and that a claim based upon such obligation was not a claim for pension. A case similar to the instant case in facts and containing such a claim was Cole vs. United States, 29 Ct. of Claims Rep. 47. In that case a certificate had been issued to the claimant. It was later called in and revoked. The plaintiff's counsel contended that the action was not to recover a pension but to recover an allowance under the pension certificate duly issued. The court declared itself unable to make such a distinction, holding that if the plaintiff should recover it would be

for a sum allowed under the pension laws upon which the pension certificate was necessarily based.

See also Gordon's case, 26 Ct. of Claims Rep. 307. In that case a pension had been granted by special act of Congress. The Commissioner of Pensions stopped payment of the pension and requested Congress to repeal the act. Congress had not acted upon this request at the time suit was brought. The court held that it was without jurisdiction.

Being of the opinion that this court is without jurisdiction to entertain the plaintiff's petition, the demurrer of the defendant must be sustained and the petition dismissed.

28 In United States District Court

FLORENCE E. WILLIAMS
vs.
UNITED STATES OF AMERICA
No. 3469 Law

Decree

And now, to wit, March 8, 1927, the demurrer of the United States to the petition filed herein having come on to be heard, after argument of counsel, upon consideration thereof, it appearing that this court has no jurisdiction in the premises, it is hereby ordered, adjudged, and decreed that the demurrer of the United States to the petition be, and the same hereby is, sustained, and said petition hereby is dismissed.

Per curiam,

G.

Plaintiff excepts; and at her instance, exception noted and bill sealed.

ROBERT M. GIBSON. [SEAL.]
District Judge.

In United States District Court

Petition for Writ of Error

Filed June 6, 1927

To the Hon. ROBERT M. GIBSON, JUDGE OF THE SAID COURT:

The petition of Florence E. Williams, plaintiff, respectfully represents:

29 First. That she desires to sue out a writ of error from the Circuit Court of Appeals of the Third Circuit for the purpose of having reviewed the judgment of this court, entered March 8, 1927, in the above-entitled case, as follows:

"And now, to wit, March 8, 1927, the demurrer of the United States to the petition filed herein having come on to be heard, after argu-

ment of counsel, upon consideration thereof, it appearing that this court has no jurisdiction in the premises, it is hereby ordered, adjudged, and decreed that the demurrer of the United States to the petition be, and the same hereby is, sustained, and said petition hereby is dismissed."

Second. That petitioner is a citizen of the United States and entitled to prosecute a writ of error to the Circuit Court of Appeals in this case; but, because of poverty, she is unable to pay the fees and costs of a writ of error or to give security therefor.

Third. That petitioner believes that she is entitled to the redress for which she brought this suit upon the cause of action set forth in her petition of claim; that by the judgment of this court, as above set forth, she will be deprived of such redress, and thereby a great injustice will be done to her; and that the ground of her appeal is that she believes that this court has erred in entering judgment against her, as aforesaid.

Wherefore, petitioner prays your honor to allow a writ of error in this case without her being required to prepay the fees or costs or to give security therefor.

30 And she will ever pray, etc.

FLORENCE E. WILLIAMS,
By WM. KAUFMAN,
Attorney.

WILLIAM KAUFMAN, Esq.,
307-7 Standard Life Building, Pittsburgh, Pa.,
Attorney for Plaintiff.

WESTERN DISTRICT OF PENNSYLVANIA, ss:

William Kaufman, being duly sworn according to law, deposes and says that he is the attorney for the petitioner above named, and makes this affidavit and has signed the foregoing petition for and on her behalf; that she has frequently declared to deponent that she desired to appeal from the judgment mentioned in the foregoing petition, and retained deponent as her attorney therein; that deponent has recently been unable to find the petitioner, although he has made diligent search for her, and that is the reason why petitioner has not signed the petition or made this affidavit in person; that deponent knows that petitioner is unable, because of poverty, to prepay fees and costs of a writ of error or to give security therefor; and that petitioner is appealing not merely for the purpose of delay or frivolously, but because she believes that injustice has been done to her by the said judgment which should be remedied; and that the averments contained in the petition and in this affidavit are true.

WM. KAUFMAN.

Sworn to and subscribed the 6th day of June, 1927.

GERTRUDE HORTON BERGER,
Dep. Clerk U. S. Dist. Court.

31 In United States District Court

Order allowing appeal

And now, to wit, June 6, 1927, the foregoing and within petition presented in open court; and, upon consideration thereof, I hereby certify that in the opinion of the court the writ of error is being taken in good faith; and it is ordered, adjudged, and decreed that the prayer of the petition be, and it is hereby, granted; that the writ of error be, and is hereby, allowed; and the plaintiff in error shall not be required to prepay the fees or costs thereof or to give security therefor.

ROBERT M. GIBSON,
District Judge.

In United States District Court

Assignment of error

And now, June 6, 1927, comes plaintiff in error and assigns the following for error, viz:

That the court below erred in entering judgment as follows:

"And now, to wit, March 8, 1927, the demurrer of the United States to the petition filed herein having come on to be heard, after argument of counsel, upon consideration thereof, it appearing that this court has no jurisdiction in the premises, it is hereby ordered, adjudged, and decreed that the demurrer of the United States to the petition be, and the same is hereby, sustained, and said petition is hereby dismissed.

"Per Curiam,

"G."

32 "Plaintiff excepts, and at her instance exception noted and bill sealed.

"(Signed) ROBERT M. GIBSON, [SEAL.]
"*District Judge.*"

[Clerk's certificate to foregoing transcript omitted in
33 printing.]

[Minute entry of argument and submission, Jan. 10, 1928, omitted in printing.]

34 [Title omitted.]

In United States Circuit Court of Appeals

Judgment filed Jan. 10, 1928

In error to the District Court of the United States, for the Western District of Pennsylvania.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Western District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be, and the same is hereby, reversed, the suit reinstated, and the cause remanded for further proceedings.

Per curiam.

BUFFINGTON, *Circuit Judge.*

PHILADELPHIA, January 10, 1928.

[File indorsement omitted.]

35 In United States Circuit Court of Appeals

[Title omitted.]

Opinion filed Jan. 10, 1928

Before Buffington, Woolley, and Davis, Circuit Judges.

BUFFINGTON, C. J.

In pursuance of section 501 of the act of Congress entitled "An act to provide adjusted compensation for veterans of the World War and for other purposes," the Director of the United States Service Bureau duly issued and delivered to William C. Williams certificate A-3081035. Such certificate provided that "in conformity with the laws of the United States, the amount herein named, eight hundred sixty-seven dollars ($867.00), less any indebtedness including interest, lawfully incurred and due hereon, shall become due and payable on the first day of January, 1945, to William C. Williams——— or upon the death of the veteran prior to the date above named, the amount hereinabove stated shall become due and payable to the beneficiary named by the veteran." It further provided "the amount due under this certificate will be paid upon presentation of the certificate with form 'Demand for payment' appearing on the reverse side hereof, duly executed and certified and accompanied by such proof of identity and right to receive payment as may be prescribed, to the director," etc. The certificate further specified its increasing loan value from year to year, provided how loans might be made upon it by banks or trust companies, that it was immune from seizure by legal process and that "all rights under this certificate are effective from the first day of January, 1925." It will be noted also that by sec. 505 of the act a fund was created and set apart for the payment of these certificates.

36 From the above it will be seen that, though issued by the Government and in form called a certificate, in substance and effect it was a paid-up endowment life insurance policy for $867.00, payable to the insured in 1945 if living and to his beneficiary or estate, as the case might be, in case of his death prior thereto. Williams died August 13, 1925, and his wife, Florence E. Williams, his named beneficiary, duly made claim from the United States for the amount specified in the certificate. Payment was refused, and thereon the widow and beneficiary brought this suit in the United States District Court for the Western District of Pennsylvania, and the United States filed an affidavit of defense pursuant to the Pennsylvania pro-

cedure act, asserting that the court had no jurisdiction in the case. This being in effect a demurrer, the above-stated facts are admitted. On hearing, the court sustained the Government's contention, saying, "True, the act does not describe the amount awarded as a pension, but it has thrown around it all the ordinary provisions relating to a pension, and the amount awarded is a gratuity plainly in the nature of a pension. When the act which conferred jurisdiction upon the Court of Claims is compared with that which confers jurisdiction upon this court, it seems quite plain that Congress intended to allow suit to be brought against it upon practically all claims except upon gratuities awarded by it, and that such gratuities were to be distributed in accordance with the regulations of the proper department of the United States and the rulings of its proper officers. Each of these acts of Congress conferring jurisdiction, it will be noted, excepts jurisdiction in the matter of pensions."

From a decree dismissing the case, Mrs. Williams took this appeal, and the sole question before us is: Had the court below jurisdiction of her suit? We are of opinion it had. This suit is not brought to obtain a pension or gratuity which the United States had provided generally for persons in a named class, of which the plaintiff's decedent was a member, but to enforce an obligation which the United States had entered into formally and directly with the plaintiff's decedent and, through him, with her, the named beneficiary. Whether the certificate evidencing the undertaking of the United States is based on a contractual or a moral obligation is not a matter of present concern in view of the fact that the United States voluntarily recognized the obligation, and, on the decedent's proof of services rendered, formally and unconditionally assumed it.

37 Whatever the right or claim of Williams was in name, the Government, in pursuance of statutory power, issued and delivered to him paid-up insurance evidenced by the certificate and promised to pay it, upon the happening of several events, one of which has now occurred. With the facts as they admittedly are by this demurrer the suit is simply against the United States upon its undertaking to pay money to the beneficiary. As this undertaking is not shown by the legislative history leading up to the enactment of the statute under which it was authorized or by the terms of the statute itself to be a pension, we can not hold that the Government's obligation, as indicated by the certificate, running to the grantee's beneficiary as well as to the grantee himself, is a pension. Accordingly, being for a sum less than $10,000, the United States granted jurisdiction to the district court to entertain this action.

So holding, the decree dismissing this suit is vacated, the same reinstated, and the cause remanded for proceedings in due course.

[File indorsement omitted.]

38 [Clerk's certificate to foregoing transcript omitted in printing.]

39 Supreme Court of the United States

Order allowing certiorari

Filed May 14, 1928

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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